

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ELYSE McCANTS and JULIETTE
DAILEY,

MEMORANDUM & ORDER

Plaintiffs,

01-CV-6029 (CBA)(SMG)

-against-

THE CITY OF NEW YORK, THE NEW
YORK CITY BOARD OF EDUCATION,
SANDRA KASE, Individually and
in Her Official Capacity,
JERRY CIOFFI, Individually and
In His Official Capacity,

Defendants.

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AMON, United States District Judge:

Plaintiffs Elyse McCants and Juliette Dailey bring this civil rights action against the City of New York, the New York City Board of Education, and Sandra Kase and Jerry Cioffi, both individually and in their official capacities. In federal claims brought pursuant to 42 U.S.C. §§ 1983 and 1985, plaintiffs allege that defendants retaliated against them for engaging in protected speech, discriminated against them based on race, and reassigned them without formal charges in violation of the First Amendment and the Equal Protection and Due Process clauses of the United States Constitution. Plaintiffs also bring state law claims for slander and intentional infliction of emotional distress.

Defendants moved for summary judgment pursuant to Rule 56 of the

Federal Rules of Civil Procedure, and this Court referred defendants' motion to United States Magistrate Judge Steven M. Gold for a Report and Recommendation ("R&R").

In a Report dated March 11, 2005, the Magistrate Judge recommended that defendants' motion be granted with respect to all state and federal law claims. Plaintiffs filed objections to certain of the recommendations made in the R&R on April 1, 2005,¹ and defendants filed a response to plaintiffs' objections on May 13, 2005. This Court has carefully considered the R&R as well as the parties' subsequent submissions and all moving papers and affidavits submitted in connection with this case. The Court adopts the R&R as the opinion of the Court insofar as it dismisses all claims brought by plaintiff Juliette Dailey and the race discrimination, due process, and state law claims brought by plaintiff Elyse McCants. However, the Court believes that there are triable issues of fact with regard to McCants' claim that she suffered an adverse employment action for engaging in protected First Amendment speech. Accordingly, defendants' motion for summary judgment is denied with respect to that claim. The parties are directed to appear before the Court on Friday, August

¹ Plaintiffs' objections did not address all aspects of the R&R. In particular, plaintiffs did not raise objections to the Magistrate Judge's recommendations with respect to both plaintiffs' racial discrimination, due process, § 1985, and slander claims. Accordingly, the Court considers the Magistrate Judge's recommendation as to the dismissal of those claims to be unopposed.

26, 2005 at 2:00 p.m. to schedule further proceedings in this matter.

SO ORDERED.

Dated: Brooklyn, New York
August 3, 2005

Carol Bagley Amon
United States District Judge